of the sale. As in theory merger affects merely the right to foreclose, and not the debt, the liability for that part of the debt not covered by the land should still remain.

INADEQUACY OF CONSIDERATION AS A BAR TO SPECIFIC PERFORMANCE. — The rule that equity follows the law receives an additional exemplification in the general refusal by the courts of equity to allow mere inadequacy of consideration to be set up as a defence to a bill for the specific performance of a contract. As the common law courts will not examine into the adequacy of consideration, so equity will not refuse to enforce a contract because the consideration is inadequate, provided the parties when entering into the agreement stood on an even footing, and the element of fraud was absent. *Coles* v. *Trecothic*, 9 Ves. 234, 246; *Seymour* v. *Delancy*, 3 Cow. (N. Y.) 445. An exception to this general rule is found in contracts for the sale of reversionary interests by heirs. *Playford* v. *Playford*, 4 Hare 546.

A recent case in the United States Circuit Court, however, deals with this question and reaches a somewhat different conclusion. The defendant in consideration of the sum of one dollar to him paid agreed to lease land to the plaintiff for the purpose of drilling for oil and gas. If either were discovered the defendant was to have a certain portion of the product. The plaintiff made no absolute promises and was at liberty to cancel the contract at any time. On the defendant's putting a third party in possession of the premises the plaintiff brought a bill for specific performance, alleging that the leasehold interest was worth over two thousand dollars. One of the grounds for the court's refusal to decree specific performance was that the contract was unconscionable, that "the consideration would be so trifling compared with the value of the leasehold interest, as to shock the moral sense." *Federal Oil Co.* v. *Western Oil Co.*, 112 Fed. Rep. 373. Had the court regarded such disparity between the value of the property and the price paid as almost overwhelming evidence either of fraud or of an intention to make a gift, the decision would have been in accord with generally accepted rules. But inasmuch as there was no intimation of fraud, and as the contract in its very essence was a speculation into which both parties entered with apparently full knowledge of its nature, the opinion of the court seems opposed to the current of authorities.

In favor of the opinion that equity should regard inadequacy of consideration as a ground for refusing specific performance, it may be said that the jurisdiction is purely discretionary and lies in the sound judgment of the court; that the parties cannot demand it as of right. *Gasque* v. *Small*, 2 Strob. Eq. (S. C.) 72, 77. Again it might be said that as common law courts regard a promise under seal as binding from the mere fact of the solemnity attending the making of such promise, so the requirement of valuable consideration, however slight, in a parol contract, exists merely for the sake of the formality which it gives to the transaction and the safeguard it affords against the consequences of rash and thoughtless promises. *Blount* v. *Blount*, 2 Law Repos. (N. C.) 587. As in the former equity will go back of the seal and refuse specific performance where no actual consideration has been given, POM., CONT., § 57, so in the latter, it might be urged, equity should look to see whether

the consideration be merely formal. On the other hand, without denying that the jurisdiction in such cases is discretionary, still it is true that this discretion is not arbitrary. *Harrison* v. *Town*, 17 Mo. 237. An apparently conclusive argument against a rule allowing equity to refuse specific performance on the ground of mere inadequacy of consideration is found in the practical impossibility of the court's weighing the numerous motives which may have actuated the parties when making the agreement. *Griffith* v. *Spratley*, 1 Cox 383. The problem of deciding just what is or what is not adequate consideration is too complicated. Were the courts to attempt this the freedom of contract would be greatly and unjustifiably limited.

How an Equity Rule has Fared in Mortgage Law. — Courts must frequently decide between rival equitable claims upon the same property. In this necessity it is natural that they follow the rule of preferring the equity which first attached. An exception often incorporated into the rule is also natural: that an equity less meritorious than a later one must be postponed, the criterion of merit being simply openness and fairness of dealing. *Rice* v. *Rice*, 2 Drew. 73. This exception is apparently the only one generally recognized.

Two established propositions in American mortgage law, however, are to be accounted for only under some other, special exception. The first proposition is that the holder in due course of a mortgage-note has the benefit of the security, though the mortgagee still retains the title thereof, and though the mortgagor before the note was indorsed was entitled in equity to have the mortgage cancelled. *Carpenter* v. *Longan*, 16 Wall. 271. A strong argument for this doctrine is that the mortgagor's property is simply made to satisfy a note to which the mortgagor has lost his defence, and that giving the holder of the note this special remedy upon an undoubted right does not substantially prejudice the maker. The second proposition of the two is that where one, by assignment or indorsement, becomes *dominus* of a mortgage-debt free from equities of third persons, the equity he acquires against the mortgagee's security-interest is also free from any equity that has attached to that interest in the mortgagee's hands. *Himrod* v. *Gilman*, 147 Ill. 293. It is noteworthy that such a latent, preëxisting equity could be recognized at most only if the purchaser of the debt chose to foreclose; for he might collect in any other way and keep the proceeds, and the mortgagor, on paying the one legally entitled to collect, might assert his own paramount equity to have the security back. The rule of *Himrod* v. *Gilman* simplifies, and is not unfair. Considered as an exception to the usual rule of priority, it has a common principle with *Carpenter* v. *Longan*, *supra*. Among equitable claimants against a mortgagee's interest, one who has lost the right on which his equity as a matter of substance depended is disregarded in favor of those subsequent in time but superior in power.

A recent California decision on a mortgage transaction violates the rule even so modified. A contractor's claim for constructing a building was subject, by statute, to an equitable lien in favor of material-men. He assigned this contract claim to secure his note. The assignee then assigned the claim to a dummy to hold for him, and indorsed the note to a holder in due course who did not know, although his indorser did,